



Reprinted
January 16, 2008

SENATE BILL No. 40

DIGEST OF SB 40 (Updated January 15, 2008 2:47 pm - DI 14)

Citations Affected: IC 14-26; IC 32-21.

Synopsis: Permits for shoreline activities. Allows the natural resources commission to grant certain permits with an expiration period of more than two years. Allows a determination or judgment of a dispute among persons with competing riparian interests to be enforced in a civil proceeding. Provides that if: (1) a temporary structure has been placed in a public freshwater lake under a permit or an exemption pursuant to riparian rights arising from the ownership of real property; and (2) the ownership in fee simple of the real property is transferred; the person to whom the ownership of the real property is transferred, to maintain the temporary structure in its location, must obtain a permit or meet the requirements for an exemption according to the permit requirements or exemption requirements in effect when ownership of the real property is transferred to the person. If a temporary structure is in a public freshwater lake and there is a sale of the real property, the owner must disclose that the temporary structure may need to be modified by the purchaser to meet current department of natural resources specifications for the temporary structure.

Effective: July 1, 2008.

Meeks

January 8, 2008, read first time and referred to Committee on Natural Resources.
January 10, 2008, reported favorably — Do Pass.
January 15, 2008, read second time, amended, ordered engrossed.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 40

A BILL FOR AN ACT to amend the Indiana Code concerning
natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-26-2-17 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. **(a) Subject to**
3 **subsection (b) and section 24 of this chapter**, a permit issued under
4 this chapter expires two (2) years after the permit is issued.

5 **(b) The commission may adopt rules to establish an expiration**
6 **period that is more than two (2) years for any specific type of**
7 **permit.**

8 SECTION 2. IC 14-26-2-23, AS AMENDED BY P.L.152-2006,
9 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2008]: Sec. 23. (a) Unless a person obtains a permit from the
11 department under this section and conducts the activities according to
12 the terms of the permit, a person may not conduct the following
13 activities:

14 (1) Over, along, or lakeward of the shoreline or waterline of a
15 public freshwater lake:

16 (A) excavate;

17 (B) place fill; or

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- 1 (C) place, modify, or repair a temporary or permanent
 2 structure.
- 3 (2) Construct a wall whose lowest point would be:
 4 (A) below the elevation of the shoreline or waterline; and
 5 (B) within ten (10) feet landward of the shoreline or waterline,
 6 as measured perpendicularly from the shoreline or waterline;
 7 of a public freshwater lake.
- 8 (3) Change the water level, area, or depth of a public freshwater
 9 lake or the location of the shoreline or waterline.
- 10 (b) An application for a permit for an activity described in
 11 subsection (a) must be accompanied by the following:
- 12 (1) A nonrefundable fee of one hundred dollars (\$100).
 13 (2) A project plan that provides the department with sufficient
 14 information concerning the proposed excavation, fill, temporary
 15 structure, or permanent structure.
 16 (3) A written acknowledgment from the landowner that any
 17 additional water area created under the project plan is part of the
 18 lake and is dedicated to the general public use with the public
 19 rights described in section 5 of this chapter.
- 20 (c) The department may issue a permit after investigating the merits
 21 of the application. In determining the merits of the application, the
 22 department may consider any factor, including cumulative effects of
 23 the proposed activity upon the following:
- 24 (1) The shoreline, waterline, or bed of the lake.
 25 (2) The fish, wildlife, or botanical resources.
 26 (3) The public rights described in section 5 of this chapter.
 27 (4) The management of watercraft operations under IC 14-15.
 28 (5) The interests of a landowner having property rights abutting
 29 the lake or rights to access the lake.
- 30 (d) A contractor or agent of the landowner who engages in an
 31 activity described in subsection (a)(1), (a)(2), or (a)(3) must comply
 32 with the terms of a permit issued under this section.
- 33 (e) The commission shall adopt rules under IC 4-22-2 to do the
 34 following:
- 35 (1) Assist in the administration of this chapter.
 36 (2) Provide objective standards for issuing permits under this
 37 section, including standards for the configuration of piers, boat
 38 stations, platforms, and similar structures. The standards:
 39 (A) may provide for a common use if the standard is needed to
 40 accommodate the interests of landowners having property
 41 rights abutting the lake or rights to access the lake; and
 42 (B) **subject to section 24 of this chapter**, shall exempt any

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class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.

(3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:

(A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and

(B) a person affected by the determination of the department may seek administrative review by the commission.

(f) After:

(1) a final agency action under subsection (e)(3) that makes a determination of a dispute among persons with competing riparian interests; and

(2) the completion of the opportunity for judicial review; a party to the dispute may seek enforcement of the judgment or determination in a civil proceeding. The remedy under this subsection is supplemental to any other legal remedy of the party.

SECTION 3. IC 14-26-2-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 24. (a) This section does not apply to a temporary structure that is:**

(1) modified in a manner that requires a permit under this chapter; or

(2) determined to be a nuisance under rules adopted by the department.

(b) If:

(1) a temporary structure has been placed over, along, or lakeward of the shoreline or waterline of a public freshwater lake under:

(A) a permit issued under section 23 of this chapter; or

(B) an exemption provided under section 23(e)(2)(B) of this chapter;

(2) the temporary structure was placed in its location pursuant to riparian rights arising from the ownership of real property; and

(3) the ownership in fee simple of the real property is transferred;

the person to whom the ownership of the real property is

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transferred, to maintain the temporary structure in its location, must obtain a permit for the structure under section 23 of this chapter or meet the requirements for an exemption under section 23(e)(2)(B) of this chapter according to the permit requirements or exemption requirements in effect when ownership of the real property is transferred to the person.

SECTION 4. IC 32-21-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

(1) Disclosure by the owner of the known condition of the following:

(A) The foundation.

(B) The mechanical systems.

(C) The roof.

(D) The structure.

(E) The water and sewer systems.

(F) Additions that may require improvements to the sewage disposal system.

(G) Other areas that the Indiana real estate commission determines are appropriate.

(2) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

(3) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

(4) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

(5) If IC 14-26-2-24 applies to the sale, a disclosure by the owner that IC 14-26-2-24 applies to any temporary structure

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1 that has been placed over, along, or lakeward of the shoreline
2 or waterline of a public freshwater lake (as defined in
3 IC 14-26-2-3).

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COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 40, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 40 as introduced.)

JACKMAN, Chairperson

Committee Vote: Yeas 8, Nays 1.

 SENATE MOTION

Madam President: I move that Senate Bill 40 be amended to read as follows:

Page 4, after line 6, begin a new paragraph and insert:

"SECTION 4. IC 32-21-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 7. The Indiana real estate commission established by IC 25-34.1-2-1 shall adopt a specific disclosure form that contains the following:

(1) Disclosure by the owner of the known condition of the following:

- (A) The foundation.
- (B) The mechanical systems.
- (C) The roof.
- (D) The structure.
- (E) The water and sewer systems.
- (F) Additions that may require improvements to the sewage disposal system.
- (G) Other areas that the Indiana real estate commission determines are appropriate.

(2) A notice to the prospective buyer that contains substantially the following language:

"The prospective buyer and the owner may wish to obtain professional advice or inspections of the property and provide for appropriate provisions in a contract between them concerning any advice, inspections, defects, or warranties obtained on the property."

(3) A notice to the prospective buyer that contains substantially the following language:

"The representations in this form are the representations of the

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owner and are not the representations of the agent, if any. This information is for disclosure only and is not intended to be a part of any contract between the buyer and owner."

(4) A disclosure by the owner that an airport is located within a geographical distance from the property as determined by the Indiana real estate commission. The commission may consider the differences between an airport serving commercial airlines and an airport that does not serve commercial airlines in determining the distance to be disclosed.

(5) If IC 14-26-2-24 applies to the sale, a disclosure by the owner that IC 14-26-2-24 applies to any temporary structure that has been placed over, along, or lakeward of the shoreline or waterline of a public freshwater lake (as defined in IC 14-26-2-3)."

Renumber all SECTIONS consecutively.

(Reference is to SB 40 as printed January 11, 2008.)

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